

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

DECLARATION OF DONALD BURKE IN SUPPORT OF
OBJECTION OF THE AD HOC GROUP OF GENERAL OBLIGATION
BONDHOLDERS TO MOTION OF DEBTORS FOR ORDER APPROVING
PROCEDURE TO RESOLVE COMMONWEALTH-COFINA DISPUTE

1. I am an attorney associated with the law firm of Robbins, Russell, Englert, Orseck, Untereiner, and Sauber LLP, counsel, along with Jiménez, Graffam & Lausell, for the Ad Hoc Group of General Obligation Bondholders. I submit this declaration in support of the *Objection of the Ad Hoc Group of General Obligation Bondholders to Motion of Debtors for Order Approving Procedure to Resolve Commonwealth-COFINA Dispute*.

2. Attached hereto as **Exhibit A** is a true and correct copy of the article published by Reorg Research on May 5, 2017, entitled *AAFAF Says Title III Won't Touch Supplier Payments as Treasury Sends Out \$70M in Checks This Week*.

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); and (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474).

3. Attached hereto as **Exhibit B** is a true and correct copy of the article published by Reorg Research on June 13, 2017, entitled *Commonwealth Report Forecasts \$1.15B Treasury FY 2017 Closing Balance*.

4. Attached hereto as **Exhibit C** is a true and correct copy of certified translations, and the certificate of translation therefor, of the following:

- a. The article published by El Vocero on June 15, 2017, entitled (in translation) *The New \$1.15 Billion... And More*; and
- b. The article published by El Vocero on June 15, 2017, entitled (in translation) *Another \$395 Million in Government Accounts*.

5. Attached hereto as **Exhibit D** is a true and correct copy of the article published by Reorg Research on June 20, 2017, entitled *Tax Haul Misses Mark in May, Outpaces 11-Month Estimate by \$228.3M*.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on June 21, 2017, in Annandale, Virginia.


Donald Burke

EXHIBIT A

Puerto Rico

AAFAF Says Title III Won't Touch Supplier Payments as Treasury Sends out \$70M in Checks This Week

Fiscal Agency and Financial Advisory Authority Executive Director Gerardo Portela said Friday that the Title III filing on behalf of the commonwealth government won't affect its payments to suppliers.

"The government has the commitment and, more importantly, the ability to pay suppliers and providers as usual. All of the government's bills will be processed under the ordinary process," Portela said in an emailed statement.

Unlike in a traditional corporate bankruptcy, under Title III the government is authorized to pay suppliers and providers as contemplated in the commonwealth fiscal plan certified by the PROMESA oversight board in March.

In this manner, Title III allows the government to continue its operations without interruption regardless of whether the obligations were incurred before or after the Title III filing, according to the AAFAF chief.

"The government appreciates its suppliers and providers for their continued commitment to Puerto Rico. We will meet those payments to continue government operations as allowed under PROMESA," Portela said.

In a separate press release, Treasury Secretary Raúl Maldonado announced that \$70 million in payments to suppliers went out this week.

"Our commitment is to pay suppliers as established in the fiscal plan," he said, adding that next week the Treasury expects to send out another \$70 million next week, or between \$14 million and \$17 million per day.

The Treasury secretary said \$2.5 billion in supplier payments were made through the first 10 months of fiscal 2017 (through April).

"These payments guarantee the services needed to maintain government operations," Maldonado said.

[See on Reorg Research](#)

EXHIBIT B

Reorg Research

Tue 06/13/2017 18:26 PM

Puerto Rico

CORRECTION: Commonwealth Report Forecasts \$1.15B Treasury FY 2017 Closing Balance

Editor's Note: The story below has been amended to say that the Treasury Department's updated cash flow forecast included a cash balance of \$1.15 billion at the end of June, compared with \$291 million featured in the fiscal plan, representing an increase of \$859 million. A previous version of this article incorrectly stated the size of the cash balance increase.

Relevant Document:

[Treasury Single Account Cash Flow Report](#)

On Monday, the administration of Gov. Ricardo Rosselló released a cash flow report showing a \$1.4 billion actual cash balance in the Treasury Department Single Account as of May 26 and a re-forecast projected balance of \$1.15 billion at the close of fiscal year 2017 on June 30.

The re-forecast numbers show an increase in fiscal 2017 ending cash of \$859 million to \$1.15 billion, as compared with the forecasted balance in the commonwealth's fiscal plan, which projected \$291 million. Part of the discrepancy between the two forecasts can be attributed to a forbearance agreement reached in late April that delays an obligation to repay a \$400 million [Tax Revenue Anticipation Note loan](#) from the State Insurance Fund and two other public corporations, according to a footnote on the cash flow report. The fiscal plan had included \$272 million in TRANS payments from May 26 through the June 30 fiscal year end, which directly diminished the TSA closing balance.

Some sources familiar with the situation say the report calls into question the commonwealth's claims of insolvency. Besides the higher cash balance at the end of fiscal 2017 - which factors in the TRANS forbearance - the sources also say the cash flow report shows that supplier payments are being made despite the commonwealth bond defaults, with a total \$3.28 billion in supplier payments for the year.

The document is part of the information the administration made public related to a [lawsuit](#) filed by the journalists group Centro de Periodismo Investigativo. The lawsuit seeks a range of documents and communications exchanged between the administration and the PROMESA oversight board, including financial reporting and communications, reports, updates and other information exchanged between the entities. The group filed a similar lawsuit against the board in federal court.

In a written statement, Centro Executive Director Carla Minet said the commonwealth also clarified that the cash flow report is not published and is updated weekly. The administration also released a [summary of bond payments](#) that mature during the first quarter of calendar year 2017 and detailed which payments were made and which payments were missed. Commonwealth officials told Centro officials that only past-due maturities are included and that it cannot include future maturing bond payments for reasons based on "attorney-client privilege." The government also delivered boxes of statements from government accounts at commercial banks, but Minet said the government failed to respond to many of its requests, including exchanges of information and communications between the administration and the board.

Although the administration released part of the information sought by the lawsuit, officials said in court papers filed Monday that the administration reserves the right to challenge the lawsuit on its merits. It also asked that the lawsuit be removed from local court and be assigned to Judge Laura Taylor Swain as a matter related to the Puerto Rico's Title III case in federal court.

The [notice of removal](#), filed by Justice Secretary Wanda Vázquez and Deputy Secretary in Charge of Litigation Wandymar Burgos Vargas, said while the complaint is filed against the governor in his

The notice of removal also states that the lawsuit also seeks materials created prior to the commencement of the Title III case and that the suit could have commenced prior to the Title III case. "At best, this matter is an artful attempt at dodging the automatic stay. At worst, it violates the stay," the document states.

"But in any event, the action's entire purpose is to obtain documents and information from the Commonwealth which will undoubtedly be sought in many of the adversary proceedings pending before the court in the Title III case. Removal of this matter is thus both justified under the law and necessary to avoid the risk of disparate or inconsistent rulings on important discovery and evidentiary issues as well as critical privilege issues," the document adds.

The notice states that the governor "generally supports the release of relevant information to the extent permitted by law and said the administration "will make public appropriate information in response to the lawsuit as part of their efforts at transparency." However, the court filing noted that the plaintiffs "seeks every document exchanged between these parties up through May 3, 2017" and made clear in a footnote that it would reserve the right to challenge the petition on the merits, as well as argue that this litigation is precluded by the provisions of PROMESA that immunize the fiscal plan from review or oversight by a court or the Puerto Rico legislature. The notice argues that only the PROMESA board has the sole discretion to review the fiscal plan and commonwealth budgets.

In seeking the removal of the case to federal court, the administration cites PROMESA Section 306, which allows for the removal of claims over which the District Court has federal subject matter jurisdiction under PROMESA to the court in which a Title III Proceeding is pending. The notice argues that the federal court "has original jurisdiction of all cases "arising in" or "related to" cases under Title III of PROMESA."

The notice of removal also cites the requirement under PROMESA Section 106(a) (48 U.S.C. § 2126(a)) that "any action against the Oversight Board, and any action otherwise arising out of this chapter, in whole or in part, shall be brought in a United States district court for the covered territory." The notice indicates this section is relevant because the "plaintiff filed a materially similar complaint against the [board] in this district pursuant to this statute."

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EXHIBIT C

The new \$1.15 billion... and more

The government must end its fiscal year this June 30 with an available \$1.15 billion and such was reported in our edition yesterday
June 15, 2017



Photo: Carlos Rivera Giusti/EL VOCERO

It is difficult for any citizen, and even more for media such as ours, to understand why governments do not recognize that transparency is a fundamental principle in public administration.

Yesterday, EL VOCERO summarized again another case of a lack of transparency, this time from the current government. As a result of a judicial lawsuit, it was obligated to deliver documents relating to the country's fiscal situation, among which was one from the Treasury Department that details the state of cash accounts on May 26 of this year.

According to the document, the government must end the fiscal year this June 30 with an available \$1.15 billion, as reported in our edition yesterday. However, we report today that this figure, deposited into banks on the island, is elevated to \$1.545 billion, given that during further review of the document we found an additional \$395 million called "contingency".

In a press conference yesterday, the attorney Elías Sánchez, government representative before the Federal Bureau of Fiscal Oversight, tried to convince the country that the information published by us is not correct. This is despite the fact that 24 hours beforehand, we had asked government spokespersons to explain the information included in the Treasury's document. A request that remained unanswered.

Nevertheless, the actual figures presented by attorney Sánchez, summarized in our edition today, amount to the same as reported by us two days ago.

In the report that we published, at no point did we mention that there has been "economic growth or that the economic situation of the government has dramatically improved". We limited ourselves simply to presenting the same information included in a governmental document.

It satisfies us greatly that the efforts of fiscal discipline and the efforts to amass additional funds to face adverse situations in the next fiscal year have generated a positive cash flow of \$1.15 billion dollars; and we recognize the government for this achievement.

What we cannot accept is that public information is not shared unless the government is judicially obligated to do so.

Our work is and will continue being to report the information that citizens need. The information they are entitled to, in order to understand the public administration's fiscal situation.

Attorney Sánchez does this country a disservice when, in a press conference in La Fortaleza, he questions the published information stating that it was incorrect and then confirms it as true, even giving the exact details of the origin of the first summarized statement of \$1.15 billion.

As mentioned, today we are establishing the existence of an additional \$395 million, which also appears in the reserve "pot".

If what their own documents say is true, then we welcome those millions because they will help to partially resolve the fiscal crisis; but, again, it is the fault of the administration not to provide, on account of transparency, the information.

If it is incorrect and the government shows that it is not, it shall be reported as such.

The lack of information and/or information selectively placed or filtered creates uncertainty, which is the last thing Puerto Rico needs right now.

We insist that transparency, clarity and the availability of public information at all times is mandatory.

That said, the lack of transparency and the act of withholding the correct information here has a first and last name, and it's not the media.

If we all know what to accept and what we can depend on, we will have a clearer future and a greater chance to act according to the real circumstances facing the country.

We hope that this situation does not convert into the “modus operandi” of the current government as was standard in the last administration.

[Treasury Department Editorial](#)

Another \$395 million in government accounts

Official information places the government reserves in banks on the island at \$1.545 billion
June 15, 2017



Photo: EL VOCERO/ARCHIVE

The argument that the government of Puerto Rico does not have sufficient economic solvency to maintain its operation and comply with their obligations at levels of requesting the protection of Title III of the Promesa law, seems to fade away.

A more detailed look at the liquidity report shows that, in addition to the \$1.150 billion in cash accounts deposited in the Island banks, the government has an additional \$395 million accumulated in the 2016-2017 fiscal year that ends on June 30, 2017.

In line 28, in a section named “contingency”, this report establishes that the latest figure is generated with the segregation of monthly sums of between \$60 million and \$70 million by the government. This is added to the \$1.150 billion reported yesterday by EL VOCERO, raising the reserve to \$1.545 billion.

The information on these accounts arises from the Treasury Department document entitled “Puerto Rico Department of the Treasury - Treasury Single Account (TSA) Cash Flow Actual-to-Forecast Comparison”, which the government had to disclose due a judicial lawsuit on access

to public information submitted by the Center for Investigative Journalism (CPI). The document dates from May 26 and includes the state's income and expense report for this fiscal year.

Reaction from creditors

For creditors, this finding does not come as a surprise since they are aware that cash flow has improved a lot. Therefore, they doubt the need to file for bankruptcy. A source in Washington, where the news has generated a much discussion, told EL VOCERO that "the exorbitant amount of liquidity reported by the government does not justify a precipitated bankruptcy being brought on the central government. With more than \$1 billion in cash, nobody seeks bankruptcy".

He also added that the manner in which this information was disclosed is evidence of the lack of transparency of government figures and the growing lack of credibility of financial markets. He clarified that the money under discussion is a fund that come by means of collections, which, he thinks, has improved consistently.

"These figures show the level of cash in existence, showing that complaints of the lack of liquidity are simply not true, since of all these monies, 98% is the General Fund," he stressed.

The president of the Bonistas del Patio, Rafael Rojo echoed this sentiment, crediting the cash deposit to the lack of payment to bondholders, taxpayers and suppliers, at a time when collections have increased.

Rojo indicated that, "this available money pays for our proposals, to be used to loosen the game in the negotiations between creditors and the government, instead of continuing to lose money in the courts. With this, the trust of the creditor who lent money to the Island would be returned and he would be willing to do it again".

Another angle on cash

Economists interviewed by EL VOCERO have another position on the cash deposited in the commercial bank. They understand that it is not about money available to be used in a discretionary way in what they believe are their priorities, but rather as funds allocated for a specific purpose.

They maintained that, although it is cash that is available in the bank, they are prevented from using it.

For the economist Nicolás Muñoz, if these monies could be used indiscriminately, both this administration and the past one could have made use of it to pay reimbursements or suppliers.

"One has to inquire a lot more, since it is a mixture of deposits, both state and federal," he explained.

For Muñoz, the federal statements included in the total of \$1.545 billion should be questioned based on lack of use. He indicated that these funds must be used during a three-month-period in

the areas or projects for which they were granted. Therefore, they should not have been kept in deposit accounts.

In a somewhat similar manner, the economist Heidi Calero expressed that she understands that this cash deposit is a combination of state funds, a result of public corporations and federal funds.

“Water, electricity, ports, etc, and the federal funds are paid from this money. They could be restricted for specific projects”.

Not ruling out

Correspondingly, the economist Elías Gutiérrez does not rule out the appearance of other surprises in light of such an enormous budget, which the government has had for decades.

“I do not rule out a huge amount of lost money since the information systems are flawed and there is no way to represent anything. “Only God knows what other surprises will be revealed,” he ended.

[GOVERNMENT](#) [ECONOMY](#)

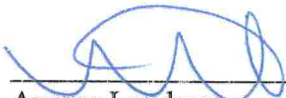


TRANSPERFECT


City of New York, State of New York, County of New York

I, Aurora Landman, hereby certify that the following documents are to the best of my knowledge and belief, true and accurate translations from Spanish into English:

- Los nuevos \$1,150 millones... y más
- Otros \$395 millones en cuentas del gobierno


Aurora Landman

Sworn to before me this
June 16, 2017


Signature, Notary Public

Stamp, Notary Public

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EXHIBIT D

Puerto Rico

Tax Haul Misses Mark in May, Outpaces 11-Month Estimate by \$228.3M

Relevant Document:

May Tax Collections Release (Spanish)

Puerto Rico's tax collections missed estimates for a second straight month in May but remained solidly ahead of projections through 11 months of fiscal 2017, the Treasury Department reported Tuesday.

Net revenue to the general fund totaled \$708.8 million in May, \$7.7 million less than estimated and \$5 million less than collected during the same month a year.

Net revenue to the general fund for the first 11 months of fiscal 2017 topped \$8.339 billion, which was \$228.3 million, or 2.8% above projections, and \$92.4 million more than what was brought in during the July-May period last year.

"We feel confident that at the conclusion of the fiscal year projections considered in the certified fiscal plan and the goals outlined by our Gov. Ricardo Rosselló will be met," Treasury Secretary Raúl Maldonado said in a press release.

Sales-and-use tax collections at the 10.5% rate reached \$199.1 million in May. Of that, \$189.8 million went to the general fund, \$9 million went to municipalities and \$270,000 went to the film fund. Sales-and-use tax revenue to the general fund in May were \$1.7 million short of estimates and \$1.5 million less than a year earlier. Sales-and-use tax collections through 11 months of fiscal 2017 topped \$1.491 billion, beating estimates by \$88.3 million and last year's July-May mark by \$135.5 million.

Net revenue to the general fund from the Law 154 excise tax on multinational manufacturers operating on the island missed estimates in May for a fourth straight month. The \$179.5 million collected fell was \$12.3 million less than targeted and \$7.9 million less than in May 2016. The levy brought in \$1.858 billion to the general fund through the first 11 months of fiscal 2017, \$128.5 million above estimates and \$182.5 million more than collected during the July-May period in fiscal 2016.

The corporate income tax generated \$69.4 million for the general fund in May, \$14.5 million more than targeted and \$12.6 more than collected during the same month a year earlier. The tax brought in \$1.363 billion during the first 11 months of fiscal 2017, \$59.9 million more than estimated but \$71 million less than the July-May period a year earlier.

Individual income tax collections brought in \$134.3 million to the general fund in May, missing estimates by \$2.2 million and falling \$4.3 million below the year-earlier haul. The tax brought in just over \$1.799 billion through the first 11 months of fiscal 2017, \$17 million less than estimated and \$55.1 million less than collected during the July-May period last year.

Non-resident withholding taxes missed estimates again in May and are trailing projections through the first 11 months of fiscal 2017. The \$26.5 million collected in May was \$19 million short of estimates and \$19 million less than collected during the same month a year earlier. The 11-month tally of \$633.4 million was \$90.3 million below estimates and \$136.1 million less than collected during the July-May period a year earlier.

Excise tax collections on motor vehicle sales found traction again in May, bringing in \$33.2 million, \$5.5 million more than projected and \$3.2 million more than the same month a year earlier. The 11-month tally of \$331.8 million was \$69.4 million ahead of estimates and \$79.4 million more than delivered during the July-May period in fiscal 2016.

Rum tax revenue to the general fund was \$18.4 million in May, beating estimates by \$600,000. The tax generated \$165.8 million for the general fund through 11 months of fiscal 2017, \$18 million short of projections and \$10.7 million less than gleaned in the July-May period last year.

The Rosselló administration has projected net revenue to the general fund to reach \$9.172 billion in the upcoming fiscal 2018. The governor's general fund budget proposal tops \$9.56 billion and contemplates \$924 million from "additional revenue measures."

Ingresos Netos al Fondo General
mayo
(millones de \$)

Conceptos	mayo		Dif.	Proyección	Recaudos
	2015-16	2016-17		mayo	vs. Proyección
Total Bruto	753.8	748.8	(5.0)	756.5	(7.7)
Reserva	(40.0)	(40.0)	-	(40.0)	-
Total Neto	713.8	708.8	(5.0)	716.5	(7.7)
Individuos	138.6	134.3	(4.3)	136.5	(2.2)
Corporaciones	56.8	69.4	12.6	54.9	14.5
Retenida a no residentes	45.5	26.5	(19.0)	45.5	(19.0)
IVU	191.3	189.8	(1.5)	191.5	(1.7)
Foráneas (Ley 154)	187.4	179.5	(7.9)	191.7	(12.3)
Bebidas alcohólicas	20.7	21.3	0.7	20.6	0.7
Cigarillos	9.8	11.2	1.4	8.9	2.3
Vehículos de motor	30.0	33.2	3.2	27.7	5.5
Arbitrios de ron	16.9	18.4	1.5	17.8	0.6
Otros	16.8	25.2	8.4	21.4	3.8

Ingresos Netos al Fondo General
julio - mayo
(millones de \$)

Conceptos	julio - mayo		Dif.	Proyección julio- Mayo	Recaudos vs. Proyección
	2015-16	2016-17			
Total Bruto	8,686.8	8,779.3	92.4	8,551.0	228.3
Reserva	(440.0)	(440.0)	-	(440.0)	-
Total Neto	8,246.8	8,339.3	92.4	8,111.0	228.3
Individuos	1,854.3	1,799.2	(55.1)	1,816.2	(17.0)
Corporaciones	1,434.0	1,363.0	(71.0)	1,303.1	59.9
Retenida a no residentes	769.6	633.4	(136.1)	723.7	(90.3)
IVU	1,355.8	1,491.3	135.5	1,403.0	88.3
Foráneas (Ley 154)	1,675.7	1,858.2	182.5	1,729.7	128.5
Bebidas alcohólicas	230.9	234.3	3.4	238.2	(3.9)
Cigarrillos	88.5	107.1	18.6	107.2	(0.1)
Vehículos de motor	252.4	331.8	79.4	262.4	69.4
Arbitrios de ron	176.5	165.8	(10.7)	183.8	(18.0)
Otros	409.3	355.1	(54.2)	343.7	11.4

[See on Reorg Research](#)